

TO: Chief Administrator
Civilian Office of Police Accountability¹

FROM: COPA Investigator A

SUBJECT: Log #1085186
U #17-008

REFERENCE: RD #XXXXXX (Aggravated Battery to PO w/Handgun)

DATE/TIME: 12 May 2017, 1425 hours

INVOLVED OFFICER #1: Officer A; Chicago Police Officer, Star #XXXXXX Unit XXX; Hispanic male; Employee #XXXXXX; DOB: XXXXXX; DOA: 03 June 2013; On duty; Plainclothes. Beat XXXXX.

INVOLVED OFFICER #1's WEAPON: Glock Model 17; 9mm semi-automatic pistol; Serial #XXXXXX; FOID #XXXXXXXXXX; Fired sixteen (16) times.

INVOLVED OFFICER #1's INJURIES: Non-penetrating gunshot wound to chest. Treated at Hospital A.

INVOLVED OFFICER #2: Officer B; Chicago Police Officer; Star #XXXXXX; Unit XXX; Hispanic male; Employee #XXXXXXXXXX; DOB: XXXXXXXX; DOA: 15 March 2013; On-Duty; Plainclothes. Beat XXXXX.

INVOLVED OFFICER #2's WEAPON: Springfield Armory, Model XDM; 9mm semi-automatic pistol; Serial #XXXXXXXXXX; FOID #XXXXXXXXXX; Fired five (5) times.

INVOLVED OFFICER #2's INJURIES: None Reported. Transported to Hospital A as precaution due to hyperventilating.

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendations of COPA.

SUBJECT: Subject 1; black female; DOB: XXXXXXXX; XXX N. Kenneth Avenue; IR #XXXXXX

SUBJECT's INJURIES: Several gunshot wounds to the body. Transported to Hospital B. Stable condition.

SUBJECT's WEAPON: Ruger Model P89; semi-automatic pistol; Serial #XXXXXXX; Black finish.

LOCATION: XXXX W. Maypole Avenue (sidewalk)

TIME OF IPRA NOTIFICATION: 12 May 2017, 1505 hours

TIME OF IPRA RESPONSE: 12 May 2017, 1537 hours

INTRODUCTION:

On 12 May 2017, at approximately 1427 hours, Officers A and B were on routine patrol in the vicinity of XXXX W. Maypole Avenue when they encountered Subject 1, whom they believed to be involved in narcotics trafficking. Unknown to the officers was the fact that Subject 1 was in possession of a handgun she purchased with the purpose of using it to commit suicide. The officers attempted to conduct an investigatory stop when, without warning, Subject 1 shot Officer A in the chest and then pointed her firearm at Officer B still seated in the police vehicle. Both officers returned fired, striking Subject 1 several times. Officer A and Subject 1 survived their gunshot wounds.

APPLICABLE RULES

Chicago Police Department General Order, GO 03-02-03; Firearms Discharge Incidents Involving Sworn Members

INVESTIGATION:

The **Preliminary Report** related that Officers A and B were traveling west on Maypole Avenue in their assigned dark, blue unmarked CPD Ford Explorer when they observed Subject 1 in what appeared to be a narcotics transaction with an unidentified male subject on the south sidewalk. The officers decided to stop and investigate Subject 1 and the unidentified male subject. Officer B performed a U-turn and traveled a short distance east on Maypole Avenue. Subject 1 began to walk

east on the sidewalk toward Kenton Avenue. Officer A exited the police vehicle and instructed Subject 1 to stop. Subject 1 continued to walk east and Officer A followed her on foot as he repeatedly ordered her to stop. Officer B drove east on the street parallel to Subject 1. As Subject 1 ignored Officer A's repeated orders to stop she said words to the effect of, "You don't want to mess with me." Subject 1 then began to run east on the sidewalk.

As Officer A chased Subject 1 he saw her move her hands in front of her body. Officer A then heard what he believed sounded like the slide of a semi-automatic handgun cycling a round into the chamber. When Subject 1 reached the parking area for business at XXXX W. Maypole Avenue she turned and pointed a semi-automatic handgun directly at Officer A. Subject 1 and Officer A then discharged their firearms at each other. Subject 1 continued to run east through the business's lot as Officer B continued to drive parallel to her. Subject 1 then pointed her firearm at Officer B, who discharged his firearm at her through the open front passenger window of the police vehicle. Officer A, who also continued to chase Subject 1, fired a second volley of shots at Subject 1.

Subject 1 continued to run for several feet before falling to the pavement directly in front of the business's overhead bay door, located on the east end of the building. Subject 1 was taken into custody and EMS was requested. Subject 1 repeatedly said to the officers, "I fucked up" and "you killed me."

After Subject 1 was in custody it was discovered that Officer A had been shot in the front of his vest, and that the fired bullet damaged his flashlight which was in a pocket on the front of the vest. (Att. 4)

Subject 1's Arrest Report (CB#XXXXXXXX) stated that she was placed into custody after pointing and discharging a firearm at Officers A and B, subsequently striking Officer A on his chest. A name check revealed a warrant (CWXXXXXXXX) for Subject 1's arrest. The report stated that Subject 1 was shot during her arrest and never arrived in a Chicago Police Department Lock-Up.

In the "Watch Commander Comments" section of the report it was noted that on 13 May 2017, at 2313 hours, Attorney A visited Subject 1 at Hospital B, at which time Subject 1 related that she did not wish to speak with any CPD Members. (Att. 9)

Officer A's Tactical Response Report and Officer's Battery Report characterized Subject 1 as an "assailant" whose actions were likely to cause death or great bodily harm. It was further reported that Subject 1 discharged a semi-automatic pistol at Officer A, striking him on his chest. Officer A then discharged his firearm 16 times at Subject 1. (Att. 10)

Officer B's Tactical Response Report and Officer's Battery Report characterized Subject 1 as an "assailant" whose actions were likely to cause death or great bodily harm. It was further reported that Subject 1 pointed a 9mm semi-automatic pistol at Officer B after she discharged that firearm multiple times at, and subsequently striking, Officer A. Officer B then discharged his firearm at Subject 1 5 times. (Att. 12)

The **Office of Emergency Management and Communication (OEMC) PCAD Printouts** stated that on 12 May 2017, at 1425 hours, a “10-1”² was issued due to multiple gunshots being fired at Beat XXXXX (Officers A and B). At 1429 hours it was reported that a police officer had been shot near XXXXXX Avenue and Maypole Avenue. EMS was requested for the police officer and the offender. (Atts. 18-20)

In his **Synoptic Report – Weapons Discharge-Hits Report**, Sergeant A stated that on 12 May 2017, at 1915 hours, he began the twenty-minute observation period of Officer B. At 1938 hours, the breathalyzer examination was performed on Officer B, resulting in a BrAC³ of .000. At 1925 hours Officer B provided a urine sample. (Att. 66)

In his **Synoptic Report – Weapons Discharge-Hits Report**, Sergeant A stated that on 12 May 2017, at 1930 hours, he began the twenty-minute observation period of Officer A. At 2001 hours, the breathalyzer examination was performed on Officer A, resulting in a BrAC of .000. At 1945 hours Officer A provided a urine sample. (Att. 65)

Evidence Technician Photographs depict Subject 1’s damaged cell phone; grey and black Hanes boxer-brief shorts with two holes and stained with blood; her white hooded jacket stained with blood and an apparent fired casing inside it; a white blood-stained T-shirt; red pants with what appears to be holes in the left pants leg; and a pair of blood-stained gym shorts with holes in them.

Photographs also depict Subject 1’s black semi-automatic Ruger P89 handgun, as well as Officer A’s damaged flashlight and protective vest.

The photographs also depicted the location of incident, which showed numerous fired casings on the pavement, apparent bullet holes in the overhead doors of the commercial building, and fired casings inside the involved officers’ vehicle. There were two fired casings in the center console, one fired casing in the rear cargo area, one on the backseat, and another on the floor behind the front passenger seat. (Att. 51-59)

There were no **Police Observation Devices (PODs)** located in the vicinity of this incident. (Att. 17)

Two **Chicago Department of Transportation (CDOT) Cameras** (Camera #XXXX and Camera XXXX) located at XXXX W. Washington Boulevard did not have a view of the location of this incident. (Att. 73)

An **Illinois State Police (ISP) Laboratory Report** dated 17 July 2017 stated that Officer A’s firearm (Inventory #XXXXXX) was examined and found to be operable. It was determined that 16 of the recovered fired cartridges were fired from Officer A’s firearm.

² A “10-1” is the call a police officer would make over the radio indicating that the officer has an emergency and needs assistance.

³ Breath Alcohol Concentration.

Officer B's firearm (Inventory #XXXXXX) was examined and found to be operable. It was determined that 5 of the recovered fired cartridges and 1 bullet fragment were fired from Officer B's firearm.

Subject 1's firearm (Inventory #XXXXXX) was examined and found to be operable. It was determined that 2 of the recovered fired cartridges were fired from Subject 1's firearm.

The ISP report also stated that 4 of the recovered bullets/bullet fragments were examined and determined to not have been fired from the firearms belonging to Officer B or Subject 1. The aforementioned bullets/bullet fragments also could not be identified or excluded as being fired from Officer A's firearm, nor could it be determined if they were fired from the same firearm.

Furthermore, 5 lead fragments were determined to not be suitable for further microscopic comparison. (Att. 79)

A Chicago Fire Department's Ambulance Report noted that on 12 May 2017, at 1427 hours, Ambulance #XX was dispatched to XXXX W. Maypole regarding a person down from an unknown cause. At 1428 hours, Ambulance #XX arrived at the aforementioned location, and the patient⁴. Subject 1 was examined and found to have sustained several gunshot wounds. At 1437 hours Ambulance #XX departed the scene and transported Subject 1 to Hospital B. (Att. 48)

Medical Records obtained from Hospital B related that Subject 1 entered the Emergency Room with multiple gunshot wounds. Subject 1 sustained gunshot wounds to the front of the left shoulder; left upper back over her left scapula⁵; the front of her lower right quadrant; the right flank⁶; right anterior knee⁷; left medial knee⁸; two to her right buttock; one to left buttock; and one to her left leg. Police informed hospital personnel that Subject 1 was pulled over by officers and she shot one of the officers. Subject 1 was subsequently shot multiple times. (Att. 76)

Criminal charges were filed against Subject 1 in Cook County Criminal Court Case #17CRXXXXXX. Subject 1 was charged with several counts each of attempted murder; aggravated battery against a peace officer; aggravated discharge of a firearm against a peace officer; aggravated assault against a peace officer; and aggravated unlawful use of a weapon. That case is still pending as of the date of this report. (Att. 80)

Civilian Witness Statements

During a video recorded interview with CPD Detectives on 13 May 2017, Subject 1 stated early in the day of 12 May 2017 she bought a black 9mm handgun because she intended on committing suicide with it. Subject 1 stated that she could not recall who sold her the handgun. Subject 1 further explained that she was despondent because of the recent deaths of her brother and

⁴ Now known to be Subject 1.

⁵ Shoulderblade.

⁶ Side.

⁷ Front of the knee.

⁸ Inside of the knee.

her cousin. Subject 1 stated that she was listening to music on her earphones as she walked and her handgun was in the front waistband of her pants. Subject 1 saw an unmarked blue police vehicle drive past her, and a few moments later she “felt” someone following her. Subject 1 noticed that the unmarked police vehicle had turned around and was now following her. Subject 1 stated that she removed the earphones from her ears and heard the passenger officer⁹ say to her, “Come here.” Subject 1 replied, “Officer, I’m not in a good state of mind. I just lost my brother and cousin.” Officer A then said, “Come here or I’ll get out of the car.” Subject 1 continued to walk away when she noticed Officer A exit the vehicle with his firearm drawn and she heard him say to her, “You might as well run.” Frightened, Subject 1 began to run, at which time Officer A shot her, striking her on her left shoulder. Subject 1 stated that she then pulled her firearm from the front of her waistband, cycled a live round into the chamber by pulling the slide back, turned and pointed the gun at Officer A, who was running after her. Subject 1 fired one round at Officer A, after which she threw her gun and continued to run away. Subject 1 stated that the driving officer¹⁰ also repeatedly shot at her as she ran. Subject 1 fell to the pavement and was subsequently handcuffed by Officer A.

Subject 1 stated that she never pointed her gun at the police vehicle or Officer B. Subject 1 denied shooting at Officer B. Subject 1 could only recall discharging her firearm once, which was when she shot at Officer A.

Subject 1 also told CPD Detectives that she should thank Officers A and B, explaining that had they not attempted to stop her she would have killed herself. Subject 1 stated that the officers probably saved her life. (Att. 60)

The **Cook County Public Defender’s Office** represented Subject 1 and declined to allow IPRA to interview in furtherance of this investigation. (Atts. 33, 34)

During a telephone call with IPRA on 16 May 2017, Civilian 1 stated that she is Subject 1’s cousin. Civilian 1 did not witness this incident, but did speak to Subject 1 over the phone while Subject 1 was in the hospital following the incident. Subject 1 informed her that she never had a gun and never shot a police officer. Subject 1 also told Civilian 1 that the police did not find any gunshot residue on her person or her clothes. Subject 1 explained to her that the officers pulled up and the driver exited the vehicle and immediately began shooting at her. Civilian 1 also stated that she spoke to several people who claimed to have witnessed the incident. These witnesses told Civilian 1 that Subject 1 did not have a gun. At the time of this phone call Civilian 1 did not have the names or contact information readily available. Civilian 1 agreed to provide IPRA with that information as soon as possible. Three days later, Civilian 1 telephoned IPRA and provided the R/I with the only witness¹¹ whose name and contact info she was able to obtain. (Atts. 27, 35)

During a telephone call with IPRA, “**Civilian 2**” stated that he heard between 10 and 13 gunshots. “Civilian 2” stated that he did not witness the shooting, or what occurred leading up to the shooting. “Civilian 2” refused to provide an in-person interview or any additional information in furtherance of this investigation. (Att. 36)

⁹ NKA Officer A.

¹⁰ NKA Officer B.

¹¹ The only information Civilian 1 had was the name “Civilian 2” and a telephone number: 773-XXX-XXXX.

Attempts to interview the two additional witnesses (via letters, telephone calls, and personal visits) in furtherance of this investigation were unsuccessful. During a canvass of the location of this incident, Civilian 3 was identified as a possible witness by her grandmother, Civilian 5. Unrelatedly, Civilian 4 provided reporters from the Chicago Tribune an interview on the day of the incident where he claimed to have witnessed this incident. It was reported that "Civilian 4, who lives on the block, said he was on his way home when a blue unmarked police car stopped in the middle of the street to talk to someone walking east on Maypole Avenue. As an officer opened his door, the person started running and shots were fired, he said. 'All of a sudden they were jumping out of the car,' Civilian 4 said. 'It wasn't even six or seven seconds and they were shooting.'" (Atts. 6, 72, 74, 75, 78, 80)

Involved Officer Statements

In a statement to IPRA on 12 May 2017, Officer A stated that he was working with his regular partner, Officer B, and they were in civilian clothes, driving an unmarked Ford Explorer. Officer B was driving and Officer A was in the front passenger seat. Officer A stated that they were on routine patrol in an area known for narcotics activity. They traveled west on Maypole Avenue, approaching XXXXXXXX Avenue, when he noticed two people on the south side of the intersection. One of the two people was wearing red pants.¹² Officer A stated that Subject 1 and the second person saw the officers and began to walk away from each other. Subject 1 walked north on the west sidewalk of XXXXXX Avenue and the second person entered a nearby apartment building. Officer A noted that their behavior was suspicious, and believed that they were involved in illegal narcotics activity. The officers turned south on XXXXXXXX Avenue and drove past Subject 1, who repeatedly looked over her shoulder at the officers. The officers drove around the block and then east on Maypole Avenue where they saw Subject 1 was then walking east on the sidewalk away from two other unknown people. Subject 1 continued to walk east on the sidewalk and subsequently ducked behind a row of cars parked along the curb on the south side of the street and out of the officer's view for a second or two. Based on his experience, Officer A believed that Subject 1 was involved in some aspect of narcotics trafficking and had ducked behind the cars to hide or conceal contraband. A few seconds later Subject 1 reappeared. Officer A exited the police vehicle and approached Subject 1. Subject 1 proceeded to walk east along the sidewalk, along the south side of Maypole Avenue, while looking over her shoulder at Officer A. Intending to conduct a field interview regarding the suspected narcotic activity, Officer A identified himself as a police officer and said, "Let me talk to you for a second, ma'am."¹³ Subject 1 replied words to the effect, "You don't wanna fuck with me" or "You don't want none of this."¹⁴ At the same time Subject 1 made sweeping motions with her hands. Officer A stated that he could clearly see that Subject 1 did not have anything in her hands at that point. Subject 1 continued to walk east on the sidewalk with Officer A walking behind her. Officer A closed the distance to about three or four feet of Subject 1 when she turned and looked at him. Subject 1 then grabbed her right side, turned, and ran east. Officer A chased Subject 1 and noticed that as she ran her left arm and hand were swinging back and forth but her right hand continually held her right side. Officer A saw Subject 1's left hand move toward the front of her body and explained, "And then I hear a crack. And, um, at that point I

¹² This person was subsequently identified as Subject 1.

¹³ Transcription of Officer A; P. 14, L. 1

¹⁴ *Id*; P. 14, L. 5

knew she had a weapon because it's very consistent with a firearm when you chamber a round.”¹⁵ Officer A stated that although he did not see it, he recognized the sound of a round being cycled into the chamber of a semi-automatic firearm.

Subject 1 then partially turned in a clockwise direction and extended her right arm in Officer A’s direction. Officer A saw Subject 1 pointing a semi-automatic handgun at him and immediately heard more than one gunshot. Officer A recalled seeing a muzzle flash, haze and smoke, but he did not feel the fired round strike him. Officer A stated that he immediately drew his firearm and discharged his firearm at Subject 1. Officer A stated that they were approximately three to four feet apart when the shooting began.

Subject 1 turned and continued to run east on the sidewalk. Officer A chased her and when she reached the corner of the building he heard additional gunshots. Believing Subject 1 was still shooting at him, Officer A returned fire. Subject 1 continued east along the bay doors of the building for several more feet before she stumbled and collapsed to the pavement and laid on her right side facing the street. Officer A approached her and could only see her left hand. Officer A holstered his firearm and handcuffed Subject 1. Officer B then drove up and stopped the police vehicle a few feet from them. Officer A added that he then utilized his radio to make notification of the shots fired and requested an ambulance for “the male offender,” at which time Subject 1 told him she was a female. Officer A also added that Subject 1 looked at him and said, “Just kill me.”¹⁶

Officer A stated that when he handcuffed Subject 1 he did not find her firearm on her. After she was handcuffed Officer A saw her firearm on the pavement nearby. Officer A stated that he did not see Subject 1 drop her handgun.

After Officer A handcuffed Subject 1 he stood up and noticed the bullet hole on the front chest of his protective vest. Officer A also noticed that his flashlight, which was in the center pocket on the front of his vest was damaged. Realizing that he had been shot, Officer A removed his vest to check himself for injury. Officer A was subsequently transported to Hospital A by ambulance for an evaluation. Officer A stated that the bullet did not penetrate his vest.

Officer A stated that he later learned that Officer B had also discharged his firearm at Subject 1. Officer A did not see, nor was he aware during the incident, that Officer B had discharged his firearm. (Att. 63)

In a statement to IPRA on 18 May 2017, Officer B stated that he was working with his regular partner, Officer A, and they were in civilian clothes driving an unmarked, Ford Explorer. Officer B was driving and Officer A was in the front passenger seat. Officer B stated that they were on routine patrol in an area known for narcotics activity. Officer B stated that he and Officer A were traveling west on Maypole Avenue when he saw two people standing on the west side of XXXXXXXX Avenue near a large empty lot. As the officers approached, one of the two people went inside a nearby house while the other¹⁷ walked north on XXXXXXXX Avenue. Officer B stated that he turned left on XXXXXXXX Avenue and as he watched through the rearview mirror

¹⁵ *Id.* P. 22, L. 6

¹⁶ *Id.* P. 32, L. 20

¹⁷ NKA Subject 1

he noticed Subject 1 repeatedly turn and look in their direction. Officer B drove around the block, and as they traveled east on Maypole Avenue he saw Subject 1 again. This time Subject 1 was walking east on Maypole Avenue.

Officer B stated that Subject 1 stopped and ducked down behind cars parked along the curb and driveway of the building on the south side of Maypole Avenue. A few moments later Subject 1 came back into view and continued to walk east on the sidewalk. Officer A then exited the police vehicle and approached Subject 1. Officer B remained in the police vehicle, heard Officer A say to her, "Let me talk to you."¹⁸ Officer B did not hear anything else that may have been said at that moment. Officer B saw Subject 1 make a motion with her hands as if she was waving off Officer A. Officer B stated that when Officer A got within two or three feet of Subject 1, she took off running. Officer B stated that Subject 1 began running east on the sidewalk chased by Officer A. Officer B drove the police vehicle east on Maypole Avenue parallel to the foot chase. Officer B watched Subject 1 through the lowered front passenger's window.

Officer B saw Subject 1 produce a black, semi-automatic handgun from her right side. As Subject 1 continued to run east on the sidewalk, she twisted her upper body in a clockwise direction and extended her right arm behind her. Officer B stated that Subject 1 looked at Officer A and pointed her handgun at him. Officer B stated that Subject 1 and Officer A were only two or three feet from each other when she turned and pointed her gun at Officer A. Officer B explained that Subject 1 and Officer A were both running east on the sidewalk when she turned and pointed her gun at Officer A. Officer B stated that he then heard two gunshots in quick succession, and he realized that Subject 1 had shot at Officer A. Officer B added that he had initially believed Subject 1 shot Officer A in his face because Officer A immediately turned his head after the initial gunshots. Officer B stated that he did not believe Officer A drew his firearm prior to Subject 1 shooting at Officer A. Officer B stated that immediately after Subject 1 shot at Officer A, Officer A drew his firearm and shot at her. Subject 1 then turned and looked in Officer B's direction. Subject 1 then turned and pointed her gun in Officer B's direction. Officer B, who had continued to drive parallel to Subject 1, produced his firearm and discharged it through the open front passenger window of the police vehicle. Officer B stated that he held his firearm in his right hand when he discharged it two or three times. Officer B explained that Subject 1 continued to move east on the sidewalk in front of the building when she pointed her gun at him, Officer B, and he fired at her. When Subject 1 reached the corner of the building Officer B fired another two or three times at Subject 1. Subject 1 then collapsed to the pavement. Officer B put his vehicle into park and exited. As he ran around the rear of his vehicle he saw Officer A run up to Subject 1 and handcuff her. Officer B walked away from where Subject 1 and Officer A were as he looked for an accurate address so he could radio for assistance, and that's when he saw Subject 1's handgun on the ground in front of one of the bay doors of the building. Officer B stated that the gun was on the pavement along the path that Subject 1 ran, adding that he never saw her drop it. Officer B stated that he never touched Subject 1's gun, and to his knowledge neither did Officer A. Officer B radioed dispatch of the shots fired and requested an ambulance for Subject 1. After Officer A stood up, Officer B noticed the damage to Officer A's vest he described as "spots"¹⁹ on the front of the vest, and realized his vest had stopped the fired bullet.

¹⁸ Transcription of Officer B; P. 16, L. 23

¹⁹ *Id*; P. 38, L. 27

Officer B did not know how many times Subject 1 discharged her firearm. Officer B stated that he did not know if Subject 1 fired her gun at him. (Att. 64)

Supervising Investigator

Major Case Specialist

ANALYSIS

CPD Policy, Illinois State Statute, & Constitutional Standards

This investigation found that Officers A's and B's use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes. According to the Chicago Police Department's General Order 03-02-03, III:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
 - 1. to prevent death or great bodily harm to the sworn member or to another person, or;
 - 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Officers A and B were on routine patrol when they observed a possible narcotics transaction. When they stopped to speak to Subject 1, one of the involved parties, she ignored the officer's commands and attempted to flee. Officer A followed her on foot while Officer B followed in the CPD vehicle, at which point Subject 1 produced a handgun and fired at Officer A, striking him in the chest. At that point, both Officer A and Officer B utilized deadly force against Subject 1, by firing their own handguns at Subject 1.

A Chicago Police Officer is permitted to use deadly force based on: Chicago Police Department's Policy regarding the use of deadly force, Illinois State Statute, and applicable standards within the United States Constitution. Based on the totality of the circumstances, the officers were justified in using deadly force because it was reasonable for them to believe that they were in danger of death or great bodily harm, given that Subject 1 had already shot Officer A.

As police officers, Officers A and B were bound by the legal standard in Illinois regarding the use of deadly force, as codified in Illinois State Statute 720 ILCS 5/7-5. The pertinent part of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

In this case, given that Officer A had just been shot in the chest, it is clear beyond a preponderance of the evidence that Officer A reasonably believed that discharging his firearm at Subject 1 was necessary to prevent death or great bodily harm to himself, his partner, and any other persons that happened to be in the area.

However, it is true that Officer A and Subject 1 were exchanging gunfire within split seconds of each other, and it is entirely possible that Officer A actually fired his first round simultaneously with or a split second before Subject 1 fired at him. Officer A told IPRA that he saw Subject 1 walk as if she may have a weapon, then saw her left hand move to the front of her body and heard the sound of a round being racked into the chamber of a firearm. Officer A stated that that was the point that he knew Subject 1 had a firearm.²⁰ Subject 1 then turned, pointed her gun at Officer A, and fired. Given that Officer A had seen Subject 1's distinctive walk and heard the specific sound of a firearm racking, it is conceivable that Officer A fired earlier than he remembers. However, even if this is the case, Officer A's use of force is still within established case law and CPD policy.

Case law suggests that Officer A was justified in using deadly force at the moment he did, rather than waiting for Subject 1 to fire upon Officer A, Officer B, or anyone else in the area. At the point Officer A heard Subject 1 rack her firearm, Officer A was entitled to use deadly force to prevent Subject 1 harming or killing him or anyone else. Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) ("... an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force); see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), ("Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law

²⁰ *Id*; P. 22, L. 6

does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

Additionally, Illinois law regarding self-defense is relevant. Self-defense, available to all persons, is codified in Illinois State Statute 720 ILCS 5/7-1(a):

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

Again, in this case, given that Officer A had just been shot in the chest, it is clear beyond a preponderance of the evidence that Officer A reasonably believed that discharging his firearm at Subject 1 was necessary to prevent death or great bodily harm to himself, his partner, and any other persons that happened to be in the area.

Lastly, determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003).

The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) “the severity of the crime at issue;” (2) “whether the suspect poses an immediate threat to the safety of the officers or others;” and (3) whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). This reasonableness calculation ‘must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.’ *Graham*, 490 U.S. at 396-97. Consequently, “when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.” *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)).

In this case, a full legal analysis is unnecessary: Subject 1 had already shot Officer A in the chest, a potentially fatal wound which happened to be mitigated only due to being partially deflected by Officer A's ballistics vest and flashlight. There is no doubt, based on Subject 1's actions, that she intended to kill Officer A. Therefore, Officers A's and B's use of deadly force against Subject 1 was objectively reasonable, and thus, WITHIN the policy of the Chicago Police Department, as well as in compliance with Illinois state statutes and the applicable standards within the United States Constitution.

Approved:

Deputy Chief Administrator